

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
JUN 14 P 4:02
U.S. DISTRICT COURT
DISTRICT OF MASS.

In the Matter of the Arbitration Proceedings between)
)
JOHN HANCOCK LIFE INSURANCE COMPANY,)
Petitioner,)
)
and)
)
SPHERE DRAKE INSURANCE LIMITED,)
Respondent)
)
_____)

Civil Action No.:
04-10181MLW

**SPHERE DRAKE'S MOTION TO STRIKE SUPPLEMENTAL AFFIDAVIT OF
MALCOLM J. BEACHAM AND AFFIDAVIT OF KEITH TUNSTALL**

Sphere Drake Insurance Limited ("Sphere Drake") respectfully moves this Court to strike the Supplemental Affidavit of Malcolm J. Beacham ("Supplemental Beacham Affidavit") and the Affidavit of Keith Tunstall ("Tunstall Affidavit") submitted by John Hancock Life Insurance Company ("Hancock") in support of its Motion for Summary Judgment.

Like the original Affidavit of Malcolm J. Beacham in Support of John Hancock's Motion for Summary Judgment,¹ Hancock's submission of the Supplemental Beacham Affidavit and the Tunstall Affidavit is an improper attempt by Hancock to usurp this Court's province of interpreting the terms of the purported contracts at issue in this litigation. As Hancock concedes, and as the terms make clear, those purported contracts are clear and unambiguous. Accordingly, the Court should not consider extrinsic evidence such as the Supplemental Beacham Affidavit and the Tunstall Affidavit, but should instead interpret the purported contracts based solely on

¹ Sphere Drake submitted its Motion to Strike the original Beacham Affidavit and its Memorandum in Support on May 26, 2004 (Docket No. 63).

their plain language. Sphere Drake respectfully requests, therefore, that the Court strike the Supplemental Beacham Affidavit and the Tunstall Affidavit in their entirety.

Alternatively, if the Court decides to consider extrinsic evidence to aid its interpretation of the purported contracts, Sphere Drake requests that the Court also consider any affidavits submitted by Sphere Drake, and grant Sphere Drake leave to take discovery.

In further support of this Motion, Sphere Drake submits herewith its Memorandum in Support.

REQUEST FOR ORAL ARGUMENT

Pursuant to L. R. 7.1(D), Sphere Drake respectfully requests that this Court hold oral argument on Sphere Drake's Motion To Strike as Sphere Drake believes oral argument will assist the Court in ruling on the pending motion.

SPHERE DRAKE INSURANCE LIMITED
By its attorneys,

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LOCAL RULE 7.1(A)(2) CERTIFICATE

I, Andrea Peraner-Sweet, hereby certify that counsel for Sphere Drake Insurance Limited has conferred with counsel for the Petitioner, John Hancock Life Insurance Company, before filing Sphere Drake's Motion to Strike Supplemental Affidavit of Malcolm J. Beacham and Affidavit of Keith Tunstall in a good faith effort to resolve the issues set forth in the motion, but the parties were unable to resolve these issues.

Andrea Peraner-Sweet (HVB)
Andrea Peraner-Sweet

CERTIFICATE OF SERVICE

I, Andrea Peraner-Sweet, hereby certify that a copy of this document was served upon all counsel of record by hand on June 14, 2004.

Andrea Peraner-Sweet (HVB)
Andrea Peraner-Sweet

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